49 N. W. 968; *Watson* v. *Milwaukee, etc. Ry. Co.*, 57 Wis. 332, 15 N. W. 468. If, as in the principal case, the debtor fails to demur for non-joinder of the assignor, a waiver of his rights against a splitting of the cause of action may well be implied, and hence the assignee's judgment should not bar later actions.

DAMAGES — LIQUIDATED DAMAGES — WHETHER DEMURRAGE RATE APPLIES TO UNREASONABLE DELAY. — The defendant was a charterer of a ship under a charter party which provided five lay days for loading, with payment of demurrage at a fixed rate per day after that. After detention of the ship for a reasonable time beyond the lay days plaintiff gave defendant notice that he would no longer accept the demurrage rate, but would hold the defendant for actual damages. The defendant declined to agree to this. The boat was retained some time longer, for which detention plaintiff seeks to recover actual damages. *Held*, that the plaintiff may recover only the demurrage rate. *Inverkip Steamship Co.* v. *Bunze*, [1917] 1 K. B. 31.

Demurrage may be considered either as an optional right in the charterer to retain the ship on paying a certain sum therefor, or as liquidated damages for a breach of the contract. If the first view be taken the option must be regarded as lasting only a reasonable time, and when the option expires, of course the provision for payment would end, and any further detention would be a breach for which actual damages could be recovered. *Western Transport Co.* v. *Barley*, 56 N. Y. 544. See *Lilly & Co.* v. *Stevenson & Co.*, 22 R. 278, 286. See CARVER, CARRIAGE OF GOODS BY SEA, 3 ed., § 609; STEVENS, DEMURRAGE, 69. This result has the advantage that it does not force the shipowner to either leave the boat for an indefinite period, and recover only a fraction of the actual damages, or take the boat away and suffer perhaps much greater damage for which he must rely on his action against the charterer. But the true construction of the contract in the principal case seems to be that the contract is to load the ship during the lay days, and pay damages at a liquidated rate for further detention; the unqualified statement "demurrage at so much per day" seems to indicate clearly that that rate of damages was relied on so long as the contract should remain in force. *Western Steamship Co.* v. *Amaral Sutherland Co.*, [1913] 3 K. B. 366. See SCRUTTON, CHARTERPARTIES AND BILLS OF LADING, 6 ed., art. 128. Had the defendant merely continued to use the boat after notice by the plaintiff he might be held to have impliedly consented to pay the actual damage, but his refusal to agree forbids such a construction of his actions. *Hagan* v. *Tucker*, 118 Fed. 731. See WALD'S POLLOCK ON CONTRACTS, 3 ed., 9.

DESCENT AND DISTRIBUTION — HOMICIDE BY INSANE HEIR. — An infant who had inherited real and personal property was killed by her insane mother, who then committed suicide. The child's property is claimed by both the mother's heirs and those who would be the child's heirs were the mother disqualified. *Held*, that the property became vested in the mother and passed to her heirs. *Re Estate of Maude Mason*, 31 Dom. L. R. 305 (Br. Col.).

For a discussion of the principles involved in this case, see NOTES, p. 622.

DOWER — VOID DIVORCE — ESTOPPEL IN PAIS — EFFECT OF IGNORANCE OF ONE'S RIGHTS. — Plaintiff secured a rabbinical divorce from R., and both parties, believing the divorce valid, "married" again. Plaintiff had knowledge of R.'s "remarriage." Plaintiff then removed from New York to Kansas. Twenty years after the separation, shortly after R.'s death, plaintiff learned that the divorce was invalid. She now claims dower in land acquired by R. and conveyed to an innocent purchaser in the interval. *Held*, she is equitably estopped from asserting her legal right to dower. *Kantor* v. *Cohn*, 56 N. Y. L. J. 1339 (Sup. Ct., King's Cty.).

Some courts have held that where the right of dower is statutory it can be barred only in such manner as the statute expressly provides. *McCreery* v.

Davis, 44 S. C. 195, 22 S. E. 178; *Martin's Heirs* v. *Martin*, 22 Ala. 86. But by the clear weight of authority the statutory right of dower may be lost by an equitable estoppel like other property rights. *Gilbert* v. *Reynolds*, 51 Ill. 513; *Norton* v. *Tufts*, 19 Utah 470, 57 Pac. 409. See 2 SCRIBNER, DOWER, 2 ed., 266 *ff.* In some jurisdictions, however, it has been held that there can be no equitable estoppel where the conveyance was made while the dower right was still inchoate. *Lohmeyer* v. *Durbin*, 213 Ill. 498, 72 N. E. 1118. See *Beeman* v. *Kitzman*, 124 Ia. 86, 93, 99 N. W. 171, 173. The basis of these decisions, that where there is no present right of control or possession, there is no present duty to assert any claim to the property, would seem hardly tenable. The duty to apprise a purchaser of one's rights must in fairness exist as well when those rights are enjoyable in the future as when enjoyable in the present. *Gilbert* v. *Reynolds*, *supra*; *Wright Lumber Co.* v. *McCord*, 145 Wis. 93, 128 N. W. 873. That mere silence, failure to assert one's rights, may give rise to an equitable estoppel is now well settled. *Wood* v. *Seely*, 32 N. Y. 105. See 2 POMEROY, EQ. JURIS., 3 ed., § 818. See 24 HARV. L. REV. 494. But in such case the party sought to be estopped must have had actual knowledge of his rights. *Bringard* v. *Stellwagen*, 41 Mich. 54, 1 N. W. 909; *Frederick* v. *Missouri River, etc. R. Co.*, 82 Mo. 402; *Trenton Banking Co.* v. *Duncan*, 86 N. Y. 221; *Dotson* v. *Merritt*, 141 Ky. 155, 132 S. W. 181. The court in the principal case argues that the plaintiff had such knowledge since the validity of a divorce, and thus the right to dower, is a matter of law, and everyone is presumed to know the law. That the state should impose a duty of being cognizant of one's rights, as well as the duty, when possessed of such knowledge, to warn innocent third parties of their existence is not inconceivable. But the law is settled otherwise where the estoppel is based on mere silence. See authorities *supra*. And to attempt to alter a doctrine based wholly upon equitable considerations by the introduction of a technical legal fiction is neither good law nor good legislation.

EASEMENTS — MODES OF ACQUISITION — IMPLIED GRANT AND RESERVATION — IMPLIED RESERVATION OF RIGHT TO FLOWAGE OF WATER IN MILL-RACE. — A tract of land included a mill and an artificial mill-race. This mill-race was used solely in connection with the mill. The owner conveyed part of the tract, containing the mill and the inlet and outlet of the mill-race, to a milling company. Later he conveyed the rest of the land, containing the middle of the race, to a town. The mill company dammed the race; and the town, claiming an easement by implication to the flowage of water in the race, destroyed the dam. The mill company seeks to recover. *Held*, that it may recover. *St. Mary's Milling Co.* v. *Town of St. Mary's*, 32 Dom. L. R. 105 (Ontario).

Where there is apparent and continuous user, that is, a quasi-easement, in one part of a tract of land for the benefit of another part, on the sale of the quasi-servient part of the land many states imply a grant back of an easement if the user was reasonably convenient for the enjoyment of the rest of the land. *Quinlan* v. *Noble*, 75 Cal. 250, 17 Pac. 69. *Cf. Taylor* v. *Wright*, 76 N. J. Eq. 121, 79 Atl. 433. Some states require for the grant back that the user be reasonably necessary to the grantor's land. *Wells* v. *Garbutt*, 132 N. Y. 430, 30 N. E. 978; *Powers* v. *Heffernan*, 233 Ill. 597, 84 S. E. 661. See 3 ILL. L. REV. 187. However, in England, Canada, and some of the states it is said that the grantor should not be able to derogate from his own grant; and there is no implied grant back to him unless the easement is strictly necessary for the land retained. *Ray* v. *Hazeldine*, [1904] 2 Ch. 17; *Attrill* v. *Platt*, 10 Can. Sup. Ct. 425, 480; *Covell* v. *Bright*, 157 Mich. 419, 122 N. W. 101; *Warren* v. *Blake*, 54 Me. 276, 286. An exception to this strict English rule has been suggested where before severance there were reciprocal quasi-easements between the two parts of the land. It was intimated that in such a case reasonable convenience is enough to establish a grant back as well as a grant. *Wheeldon* v. *Burroughs*, 12 Ch. D. 31, 59;